IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

WP(C).No. 18954 of 2004(F)

OS.134/2000 of MUNSIFF COURT,KAYAMKULAM

PETITIONER:

A.R.RAJAGOPALAN NAIR, SINDHU BHAVANAM,
KARUVATTATHEKKUM MURI, KUMARAPURAM VILLAGE.

BY ADV. SRI.P.SREEKUMAR
SRI.K.S.MANU (PUNUKKONNOOR)

RESPONDENTS:

1. **K.PANKAJAKSHY AMMA, VELLOOR HOUSE,**
   NJAKKANAL MURI, KIZHANAPURAM VILLAGE.

2. **KANAKAMMA, ASANPARAMBIL HOUSE,**
   ERUVA MURI, PATHIYOOR VILLAGE.

3. **VISWANATHAN NAIR, VELOOR HOUSE,**
   NJAKKANAL MURI, KRISHNAPURAM VILLAGE.

4. **GEETHAKUMARI, THOMAYIL HOUSE,**
   ANAYADI MURI, SOORANAD SOUTH VILLAGE,
   SASTHAMCOTTA TALUK.

5. **MEENAKSHI AMMA, ARIVANOOR CHIRAYIL HOUSE**
   KARVATTA THEKKUM MURI, KUMARAPURAM VILLAGE.

6. **S.RADHAKRISHNAN NAIR, REVATHY,**
   NEAR POOKADA, WEST FORT, MAVELIKKARA.

7. **SUBHADRAMMA, ASWATHY,**
   KARUVATTATHEKKUM MURI, KUMARAPURAM VILLAGE.

BY ADV. DR.P.S.KRISHNA PILLAI for R5 to R7
SRI.K.DIVAKARAN NAIR for R1 to R4

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.18954/2004 F

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE I.A.NO.561/04 IN O.S.NO.134/000.**

EXT.P2: **COPY OF THE ORDER DTD. 16/03/2004 IN I.A.NO.561/04.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE,J.

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W.P.(C) No.18954 of 2004

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Dated: 20th June, 2007

JUDGMENT

A detailed counter affidavit has been filed by the 2nd respondent in this Writ Petition impugning Ext.P2 order by which the learned Munsiff has found that prayers A and B in the suit are separate prayers and they are to be valued separately.

2. Heard Mr.P.Sreekumar, learned counsel for the petitioner and Mr.P.S.Krishna Pillai, counsel for respondents 6 and 7.

3. Mr.Krishna Pillai submits that prayer B which is for a declaration that the plaintiffs title to the plaint items stands perfected by efflux of time is only ancillary or incidental to prayer A which is for a declaration that the sale which is executed in favour of defendants 2 to 4 are invalid, incompetent and inoperative and not binding on the plaintiff since it will be obligatory on the part of the court to grant prayer B if prayer A is granted. In other words, the learned counsel submits that the necessity for considering prayer B will arise only in the event of a positive relief being granted as per prayer A. I find considerable force in the above submissions and have no difficulty to accept the above submissions. I set aside the impugned order and hold that prayer B in the plaint is only incidental to prayer A and no

separate court fee is not payable on prayer B. I.A.No.561/04 will stand allowed in full. The Writ Petition will stand allowed. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**